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FISCAL IMPACT REPORT

SPONSOR Snyder DATE TYPED 03/08/05 HB _____

SHORT TITLE Lower Design & Build Project Cost Minimum SB 897/aSCORC/aSFL#1

ANALYST Geisler

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			\$0.1 significant	Recurring	General, other state funds

(Parenthesis () Indicate Expenditure Decreases)

Relates to: HB 860

SOURCES OF INFORMATION

LFC Files

Responses Received From

General Services Department (GSD)
 Regulation and Licensing Department (RLD)
 Public Schools Facility Authority (PSFA)
 Department of Transportation (DOT)

SUMMARY

Synopsis of Senate Floor Amendment 1

The Senate Floor Amendment #1 on page 1, line 12 strikes “stipend” and inserts in lieu thereof “recompense” to clarify that firms on the short list are being reimbursed for expenses relating to their proposals.

Synopsis of SCORC Amendments

The Senate Corporations and Transportation Committee amendments to Senate Bill 897 clarify that unsuccessful firms on the short list and the highest-ranked firm shall be compensated for actual, documented proposal expenses in an amount not to exceed one percent of total project cost.

Payment shall be made to the short-listed firms after contract award.

Synopsis of Original Bill

Senate Bill 897 would add to the public works projects that can use the design and build project delivery system those projects with an estimated construction cost between \$5 million and \$10 million. It would require a an agency to pay to short listed firms, including the successful firm, a stipend equal to one percent of the total project cost. Payment of the stipend would not entitle the agency to any ownership rights of the documents of ideas presented in the proposal.

Significant Issues

Current law allows using the design/build strategy on public works projects over \$10 million estimated construction cost, and for projects with a combination of \$400,000 or less estimated construction cost that is only for site improvements or for a pre-engineered building. Those smaller site adapt/site improvement projects must be procured by a competitive sealed bids process rather than a request for proposal process. Current law also allows but does not require payment of an unspecified amount as a stipend to cover costs of the expense to present a proposal.

When a design/build system is utilized, the owner contracts with a “team” which includes a design entity and a construction firm selected through a two-phase request for proposals after a determination that it is appropriate and in the best interest of the state or local public body and meets specific requirements.

Advantages of Design Build Project Delivery System

PSFA notes that the advantages to the owner of this type of project delivery system include a single point of contact and responsibility for the entire project. The design/build team also assumes all of the risk for project completion. This significantly reduces the role of the owner in the process. The owner still has a role in the process in that almost all of the standard contract forms require the owner to have prepared an “owners program” which sets out the scope of work and requirements that the owner is looking for.

Another advantage to the owner is there is no “privity of contract” between the designer and the contractor. This means that the designer and contractor cannot sue each other for design errors or omissions. And, because the owner has contracted for a higher level of service, the contractor is often held to warrant the performance of a finished project. Because of the higher standard, the design /build contractor cannot escape liability merely by proving that construction was in accordance to project plans and specifications.

Disadvantages of Design Build Project Delivery System

PSFA notes the disadvantage to the owner of this type of project delivery system is that the owner cannot rely upon the architect to oversee the contractor’s work because the architect is not the owner’s agent. The architect is the contractor’s partner. The design/build team is usually given a cost to work within. The motivation to meet the owner’s specifications with the least cost materials is high because the savings translate to profit for the design/build team. This facet unfortunately can result in lower overall product quality, higher long term maintenance cost and shorter building lifecycle relative to traditional design-bid-build process. This effect can be

mitigated somewhat with more detailed “owners program” and specifications but this requires a very knowledgeable owner. Absent this knowledge the entity may have to spend additional funds to acquire the services of a construction manager to oversee the performance of the design build team.

PERFORMANCE IMPLICATIONS

Design/build is a complex project delivery system that requires a knowledgeable user agency or consultant that can adequately define the project requirements and manage the implementation.

FISCAL IMPLICATIONS

The DOT believes that the mandatory requirement to pay a stipend to cover proposal expenses of unsuccessful firms in the amount equal to 1% of total project cost will be a disincentive for agencies to use the design build process. For example, the cost of paying one unsuccessful bidder on a \$7.5 million project would be \$75,000. DOT also notes that the 1% requirement will provide a disincentive for agencies to develop a thorough short list of firms in order to limit their liability to the unsuccessful bidders.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 860 also allows design-build on projects between \$5 million and \$10 million. Unlike SB 897, HB 860 does not require payment of a stipend to the finalist and other short listed offerors.

OTHER SUBSTANTIVE ISSUES

GSD provides that the estimated construction cost is generally about 80 percent of the total project cost. The remaining 20 percent is for expenses such as design fees, contingency, consultants (e.g. environmental, engineering, survey contracts), administration, art-in-public places, gross receipts taxes on contracts.

PSFA provides that in New Mexico, this authorization does not apply to road and highway construction or reconstruction projects. The cost components that may be included to meet the cost threshold are: construction costs, architectural/engineering fees, gross receipts tax, utility connections, site development costs, built-in equipment and furnishings and up to ten percent (10%) project contingency.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

Requests to use the design/build project delivery system would only be allowed for the large public works projects with an estimated construction cost of over \$10 million.

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